

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

Appellants: Venturino et al..)	Examiner: Melanie Jo Hand
)	
Serial No: 10/721,829)	Group Art Unit: 3761
)	
Filed: November 24, 2003)	Deposit Account No: 04-1403
)	
Confirmation No: 4748)	Customer No: 22827
)	
Title: Folded Absorbent Product)	Attorney Docket No: KCX-669 (19587)
)	

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____ of the Examiner twice/finally rejecting claims _____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: [] herewith [] previously.

6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$ 510.00	\$ <u>0.00</u>
If box 2 above is X'd enter \$ 510.00	\$ <u>510.00</u>
If box 3 above is X'd enter \$1,030.00	\$ <u>0.00</u>
If box 4 above is X-d enter -0- (no fee)	\$ <u>0.00</u>

PETITION is hereby made to extend the original due date of October 25, 2008, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$120; 2 months \$460; 3 months \$1,050; 4 months \$1,640, 5 months \$2,230

	\$ <u>0.00</u>
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SUBTOTAL: \$ 510.00

Less any previous extension fee paid since above original due date. - \$ 0.00

Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

SUBTOTAL: \$ 510.00

If "small entity" verified statement filed ☐ previously,
☐ herewith, enter one-half (1/2) of subtotal and subtract

- \$ 0.00

TOTAL FEE ENCLOSED: \$ 510.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card (attach Credit Card Payment Form – PTO 2038)
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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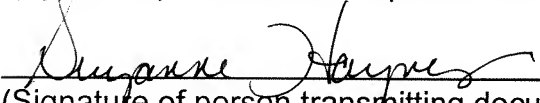
Signature: 

Date: September 29, 2008

I hereby certify that this correspondence and all attachments and any fee(s) are being electronically transmitted via the internet to the U.S. Patent and Trademark Office using the Electronic Patent Filing System on September 29, 2008.

Suzanne Haynes

(Typed or printed name of person transmitting documents)


(Signature of person transmitting documents)

PATENT
ATTORNEY DOCKET NO: KCX-669 (19587)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Title: Folded Absorbent Product)	

APPEAL BRIEF

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Honorable Commissioner:

Appellants submit the following brief on appeal in accordance with 37 C.F.R. §
41.37:

1. REAL PARTY IN INTEREST

The real party in interest in this matter is the assignee of record, Kimberly-Clark Worldwide, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to the Appellants or the Appellants' legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Currently, claims 1, 3-7, 9-16, 21-25, and 27-33 remain pending in the present application, including independent claim 1. Claims 17-20 also remain pending as withdrawn claims, and would be allowable upon allowance of generic claim 1. Claims 2, 7-11, 26, and 34-82 have been canceled from the present application.¹

All the pending claims are attached hereto in the Claims Appendix.

The rejection of claims 1, 3-7, and 9-16, and 21-33 is hereby appealed.

4. STATUS OF AMENDMENTS

To the Appellant's knowledge, all amendments have been entered into the record.

5. SUMMARY OF CLAIMED SUBJECT MATTER

In general, the method disclosed is particularly suited for the manufacture of pad structures intended for use in various consumer disposable absorbent products from a web of absorbent material. (See e.g., pg 7, lines 22-24).

¹ Applicants note that claim 26 has been canceled from the present application by an amendment filed concurrently with the present Appeal Brief, rendering the objection to claim 26 moot.

For example, independent claim 1 is directed to an absorbent article comprising an outer cover material, a liner, and an absorbent structure positioned between the outer cover material and the liner. (See e.g., pg. 16, lines 26-33 describing Figs. 1-4 as showing an absorbent article 60 including a bodyside liner 70, an outer cover 72, and an absorbent structure 74 positioned therebetween). The absorbent structure includes a front portion, a rear portion, and a middle portion positioned between the front portion and the rear portion. The middle portion is narrower than the front portion. (See e.g., pg. 11, line 28 – pg. 12, line 2 describing Figs. 5 and 6 as showing absorbent structure 10 including a front portion 12, a rear portion 16, and a middle portion 14 that is narrower than the front portion 12; see also, Figs. 7-30). The front portion extends from a front edge of the absorbent structure to the narrower middle portion, defines an outermost lateral periphery, and has a width. (See e.g., pg. 11, line 28 – pg. 12, line 2 and Figs. 4-30). The absorbent structure further comprises a pair of opposing lateral flaps connected to the middle portion and folded at least onto the middle portion of the absorbent structure. (See e.g., Figs. 5-30 and pg. 12, lines 15-16). Each of the flaps, when in an unfolded state, extends beyond the outermost lateral periphery. (See e.g., Figs. 5-30). The middle portion has a basis weight where the lateral flaps have been folded that is at least twice the basis weight of the front portion where the flaps are not located. (See e.g., pg. 12, lines 22-26). Each of the flaps having a width adjacent to the middle portion that is from about 25% to 100% of the width of the middle portion. (See e.g., pg. 13, lines 15-17). The absorbent structure also defines a length, such that the pair of opposing lateral flaps extend only a portion of the length of the absorbent structure adjacent to the middle portion. (See e.g., Figs. 5-30).

6. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

- I. The Office Action rejected claims 1, 3-6, 12-20, 22, 23, and 27-33 under 35 U.S.C. § 102(b) in view of Mesek (U.S. Patent No. 4,670,011).
- II. The Office Action rejected claims 24 and 25 under 35 U.S.C. § 102(b), or in the alternative 35 U.S.C. § 103(a), in view of Mesek.

7. ARGUMENT

Appellants respectfully submit that the presently pending claims are patentable over the cited references.

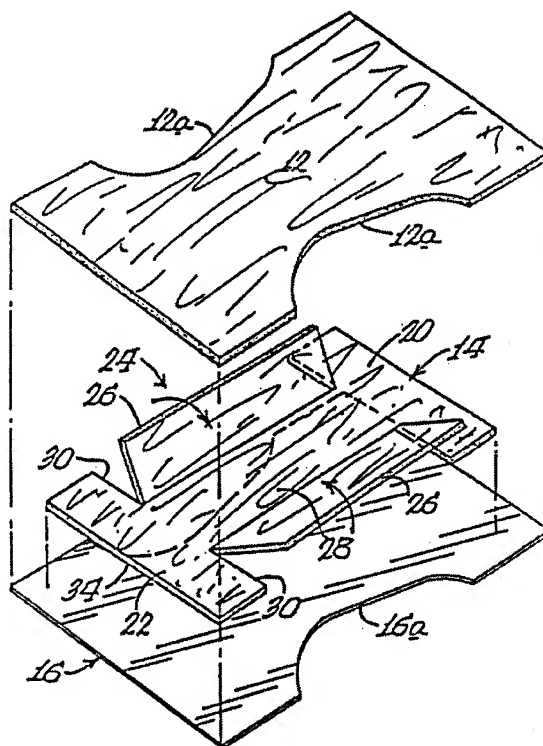
- I. **Claims 1, 3-6, 12-20, 22, 23, and 27-33 are patentable under 35 U.S.C. § 102 over Mesek.**

Mesek fails to teach or even suggest all of the limitations of independent claim 1. A claim is anticipated under 35 U.S.C. § 102 only if each and every element as set forth in the claim is found in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628 (Fed. Cir. 1987). Although anticipation is not an *ipsissimis verbis* test (e.g., identity of terminology is not required), the elements must be arranged as required by the claim, and the identical invention must be shown in as complete detail as is contained in the claim. In *re Bond*, 910 F.2d 831 (Fed. Cir. 1990); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989).

Mesek is directed to an absorbent unit for a disposable diaper, wherein the body or central portion of the batt is defined by multiple batt thickness for increased liquid holding. (Col. 3, lines 65-68). The batt is formed by cutting the longitudinal side edges of the batt to define side flaps which may be folded inwardly to provide multiple layers in the body or central portion of the batt. (Col. 4, lines 16-19). In one embodiment, the batt is cut about a third of its width dimension so that the side flaps of the batt and the

medial section are generally of equal dimension. With this arrangement, the side flaps can be folded into overlapping relationship with one another to provide an absorbent unit with three layers in the central region thereof. (Col. 4, lines 20-26).

Fig. 2 of Mesek (reproduced below) shows the central portion 24 including a pair of side flap portions 26 at opposite sides of a medial portion 28. The side flap portions 26 are defined by lines of cutting 30 which extend inwardly from the side marginal edges of batt 14. (Col. 7, lines 30-34). The batt 14 is initially a rectangular member, with cutting lines 30 being parallel to one another and to the end portions of the batt. (Col. 7, lines 35-37).



The batt 14 includes a central portion 24 including a pair of side flap portions 26 at opposite sides of a medial portion 28. As shown, these side flap portions 26 and the end portions 20,22 form a rectangular member when unfolded.

A. Mesek fails to teach all of the limitations of independent claim 1.

Mesek completely fails to teach or disclose that each of the flaps, when in an unfolded state, extend beyond the width of the front portion, as required by independent claim 1. The Office Action fails to address this limitation, except to state that Mesek discloses “each of the flaps 26, when in an unfolded state, extending beyond the width of the front portion.” (Office Action, pg. 2). Contrary to this assertion in the Office Action, Mesek simply does not disclose any such configuration. In fact, Mesek specifically states that the batt is initially (i.e., when in an unfolded state) a rectangular member. Thus, the flaps do not, and could not, extend beyond the outermost lateral periphery of the front portion. Applicants respectfully submit that independent claim 1 is not anticipated by Mesek. As such, Applicants respectfully submit that independent claim 1 is patentable over Mesek.

Furthermore, the absorbent structure as defined in claim 1 provides various benefits and advantages over the absorbent structure disclosed in Mesek. For instance, by having the flaps wider than the outermost lateral periphery of the front portion when unfolded, the flaps can be easily engaged during production of the absorbent article and folded over onto the middle portion of the absorbent structure. In particular, since the flaps are wider than the front portion, stationary folding guides can be used to easily find and fold the flaps. Due to the width of the flaps, it may not be necessary to score the web prior to folding the flaps, although score lines may be formed on the absorbent web where the flaps are to be folded if desired. (Application, Paragraph 74).

On the other hand, Mesek discloses the use of a complicated folding device shown in Figs. 10 and 11, such as a time registered cam. The presently claimed configuration eliminates the need for this device because the flaps can be easily folded using a stationary folding device.

Mesek also fails to disclose or even recognize several other advantages of the embodiment claimed by claim 1. For example, when each of the flaps extend beyond the width of the front portion when unfolded, the middle portion can be larger relative to the front portion after folding, than if each of the flaps did not extend beyond the front portion. The result of a relatively larger middle portion enables the absorbent to provide greater leakage protection in the middle area, resulting in an improved absorbent article. The Office Action apparently does not recognize that this advantage allows the resulting folded middle area to be relatively larger than it would be if the flaps did not extend beyond the width of the front portion.

As discussed in the previous two responses, Mesek was cited earlier in the prosecution of this application, and the rejection was withdrawn in the Office Action of February 8, 2006 after the personal interview of October 20, 2005. In fact, both Examiner Hill and Examiner Zalukaeva indicated that Mesek does not teach all of the limitations of presently pending claim 1. As stated on the interview summary record, although no agreement was reached, Examiner Hill suggested to define the terms more clearly such that the flaps extend beyond an outermost lateral periphery of the front portion. Examiner Hill also suggested that the front portion be defined better and that the independent claims should recite a differential basis weight. Both Examiner Hill and Examiner Zalukaeva indicated that such amendments would most likely define around

the cited references, namely Mesek. This claim language remains present in claim 1. After the interview and subsequent amendment filed on December 1, 2005, the Examiner withdrew the rejection of the pending claims in view of Mesek. Clearly, the Office Action of February 8, 2006 states that the previous rejections (based on Mesek) "have been withdrawn."

B. Mesek also fails to teach all of the limitations of the pending dependent claims.

Applicants also respectfully submit that for at least the reasons indicated above relating to corresponding independent claim 1, the pending dependent claims patentably define over the reference cited. However, Applicants also note that the patentability of the dependent claims certainly does not hinge on the patentability of independent claim 1. In particular, it is believed that some or all of these claims may possess features that are independently patentable, regardless of the patentability of the independent claim.

II. Claims 24 and 25 are patentable under 35 U.S.C. § 102 and § 103 over Mesek.

Applicants also respectfully submit that for at least the reasons indicated above relating to corresponding independent claim 1, dependent claims 24 and 25 patentably define over the reference cited.

In summary, it is believed that the claims as currently pending patentably define over the prior art of record and are in complete condition for allowance. For the reasons stated above, it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be reversed by the Board.

Please charge any additional fees required by this Appeal Brief to Deposit
Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

September 29, 2008
Date

A handwritten signature in black ink, appearing to read 'A. Marshall', written over a horizontal line.

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8. CLAIMS APPENDIX

1. An absorbent article comprising:
 - an outer cover material;
 - a liner; and
 - an absorbent structure positioned between the outer cover material and the liner, the absorbent structure including a front portion, a rear portion, and a middle portion, the middle portion positioned between the front portion and the rear portion, the middle portion being narrower than the front portion, the front portion extending from a front edge of the absorbent structure to the narrower middle portion, the front portion defining an outermost lateral periphery, the front portion having a width, the absorbent structure further comprising a pair of opposing lateral flaps connected to the middle portion and folded at least onto the middle portion of the absorbent structure, each of the flaps, when in an unfolded state, extending beyond the outermost lateral periphery, the middle portion having a basis weight where the lateral flaps have been folded that is at least twice the basis weight of the front portion where the flaps are not located, each of the flaps having a width adjacent to the middle portion that is from about 25% to 100% of the width of the middle portion, wherein the absorbent structure defines a length and wherein the pair of opposing lateral flaps extend only a portion of the length of the absorbent structure adjacent to the middle portion.
3. An absorbent article as defined in claim 1, wherein the middle portion is narrower than the front portion and the rear portion.

4. An absorbent article as defined in claim 1, wherein each of the flaps has a width adjacent to the middle portion that is from about 33% to 100% of the width of the middle portion.

5. An absorbent article as defined in claim 1, wherein each of the flaps has a width adjacent to the middle portion that is from about 50% to 100% of the width of the middle portion.

6. An absorbent article as defined in claim 1, wherein the absorbent structure has an hourglass-like shape.

12. An absorbent article as defined in claim 1, wherein each of the flaps is separated from the front portion by a first slit and separated from the rear portion by a second slit.

13. An absorbent article as defined in claim 12, wherein the absorbent structure defines a longitudinal axis that extends from the front portion to the rear portion, the first slits and the second slits being substantially perpendicular to the longitudinal axis.

14. An absorbent article as defined in claim 12, wherein the absorbent structure defines a longitudinal axis that extends from the front portion to the rear portion, the first slits and the second slits extending generally in a diagonal direction in relation to the longitudinal axis.

15. An absorbent article as defined in claim 1, wherein the absorbent structure has a generally uniform basis weight when in an unfolded state.

16. An absorbent article as defined in claim 12, wherein the absorbent structure defines a longitudinal axis that extends from the front portion to the rear

portion, the first slits and the second slits extending in a non-linear fashion in relation to the longitudinal axis.

17. An absorbent article as defined in claim 1, wherein the absorbent structure has a non-uniform basis weight when in an unfolded state, the middle portion having a higher basis weight than the front portion and the rear portion.

18. An absorbent article as defined in claim 1, wherein the absorbent structure has a non-uniform basis weight when in an unfolded state, the lateral flaps having a basis weight greater than the middle portion.

19. An absorbent article as defined in claim 1, wherein the absorbent structure has a non-uniform basis weight when in an unfolded state, the front portion and the rear portion having a higher basis weight than the middle portion.

20. An absorbent article as defined in claim 1, wherein the absorbent structure has a non-uniform basis weight when in an unfolded state, the middle portion having a basis weight greater than the lateral flaps.

21. An absorbent article as defined in claim 1, wherein the absorbent article is one of diapers, child's training pants, feminine care articles, and incontinence articles.

22. An absorbent article as defined in claim 1, wherein the absorbent structure comprises superabsorbent particles.

23. An absorbent article as defined in claim 1, wherein the absorbent structure comprises pulp fibers and superabsorbent particles.

24. An absorbent article as defined in claim 1, wherein the absorbent structure comprises an air formed web.

25. An absorbent article as defined in claim 1, wherein the absorbent structure has a basis weight of from about 100 gsm to about 2,000 gsm.

27. An absorbent article as defined in claim 1, wherein once each of the lateral flaps have been folded, the middle portion includes areas that have a basis weight that is at least 150% greater than the basis weight of the front portion and the rear portion.

28. An absorbent article as defined in claim 1, wherein once each of the lateral flaps have been folded, the middle portion includes areas that have a basis weight that is at least 3 times the basis weight of the front portion and the rear portion.

29. An absorbent article as defined in claim 1, wherein the front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, and wherein, once each of the lateral flaps have been folded, the middle portion, the center area of the front portion, and the center area of the rear portion each have a basis weight that is at least 150% greater than the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion.

30. An absorbent article as defined in claim 1, wherein the front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, and wherein, once each of the lateral flaps have been folded, the middle portion, the center area of the front portion, and the center area of the rear portion each have a basis weight that is at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion.

31. An absorbent article as defined in claim 29, wherein, once each of the lateral flaps have been folded, the middle portion has a basis weight that is at least 3 times the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, and the center area of the front portion and the center area of the rear portion have a basis weight that is at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion.

32. An absorbent article as defined in claim 1, wherein once each of the lateral flaps have been folded, the middle portion comprises two layers of material.

33. An absorbent article as defined in claim 1, wherein once each of the lateral flaps have been folded, the middle portion comprises three layers of material.

9. EVIDENCE APPENDIX

None

10. Related Proceedings Appendix

None